

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 96-0511 CSET
Controlled Substance Excise Tax
For Tax Periods: 1993**

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ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION

Authority: IC 6-7-3-5

Taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

On April 1, 1998, Taxpayers were arrested for possession of Marijuana after a search of their residence. The Indiana Department of Revenue issued a Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on June 1, 1993. The wife pled guilty to possession of Marijuana on October 27, 1993. Taxpayers were divorced in 1995. Taxpayer protested the assessment of Controlled Substance Excise Tax on September 9, 1996. A hearing was granted and scheduled for September 17, 1998. Notice of the hearing was sent to Taxpayer's last known address. Taxpayer did not appear for the hearing. Further facts will be provided as necessary.

Controlled Substance Excise Tax-Imposition

DISCUSSION

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Police statements, the State Police laboratory

report and Taxpayer's guilty plea indicate that Taxpayer was in possession of marijuana. Taxpayer has the burden of proving that the information in the file and assessment are incorrect. Since Taxpayer did not appear at the hearing, the Department must rely on the contents of the file in making a decision on the matter.

Taxpayer contends that the Judge of the criminal case dismissed the Controlled Substance Excise Tax liability. The Judge's Order indicates that the Judge dismissed a Class D felony of Failure or Refusal to Pay Tax. The Judge did not dismiss and did not have the authority to dismiss the Controlled Substance Excise Tax assessment.

Taxpayer further requests that since both she and her ex-husband were charged with this tax and they are now divorced, the tax liability should be split evenly between them. Taxpayer presented a copy of the divorce decree that had no reference to the Controlled Substance Excise Tax. Taxpayers remain jointly and severally liable for the tax.

FINDING

Taxpayer's protest is denied.